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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/779,095	02/08/2001	Jean-Louis Gucret	20982-13	1674
22852	7590	05/19/2004	EXAMINER	
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 1300 I STREET, NW WASHINGTON, DC 20005			JOYNES, ROBERT M	
			ART UNIT	PAPER NUMBER
			1615	

DATE MAILED: 05/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/779,095	Applicant(s) GUERET, JEAN-LOUIS	
	Examiner Robert M. Joynes	Art Unit 1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,5-30 and 35-55 is/are pending in the application.
- 4a) Of the above claim(s) 2-4 and 31-34 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,5-30 and 35-55 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>12-05-04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Receipt is acknowledged of applicant's Request for Continued Examination file on December 24, 2003 and Supplemental Amendment filed on February 12, 2004. Also, receipt is acknowledged of applicant's Information Disclosure Statement filed on December 5, 2003. Claims 1, 5-30, and 35-55 are pending in the application.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1, 5-11, 14-30, 35-43, 45-55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith, III (US 6491928) in combination with Engel et al. (US 6635704). Smith teaches a cleansing article wherein the article comprises a first and second insoluble substrate and a cleansing composition disposed between the two substrates wherein the cleansing composition comprises one or more surfactants (Col. 2, lines 25-39). The first layer can be made of nonwovens, wovens, formed films that

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are apertured and are permeable or impermeable (Col. 3, line 20 – Col. 5, line 12). The second layer can be made from nonwovens, wovens, sponges, netted meshes, formed film, battings and combination thereof (Col. 5, line 13 – Col. 10, line 16). The first and second substrates can be the same or different textured (Col. 3, lines 38-48). The cleansing component can contain either or both a lathering and non-lathering surfactant (Col. 10, lines 20-58). Further, the composition can contain additional layers (Col. 17, line 32 – Col. 19, line 25) and multiple chambered embodiments (Col. 19, line 55 – Col. 10, line 3).

Smith does not expressly teach that the cleansing composition is in the form of an adhesive matrix.

Engel teaches an adhesive matrix that contains particles dispersed in a polymeric matrix containing a water-soluble polymer or water dispersible polymer (Col. 1, line 66 – Col. 2, line 5). The matrix can further comprise plasticizers, skin conditioning agents, skin cleansing agents and opacifying agents (Col. 2, line 5- 10; Col. 7, lines 22-35). The polymers used for the matrix include polyacrylic acid, polyvinyl pyrrolidone and polyvinyl alcohol (Col. 3, line 40 – Col. 4, line 13). The matrix can further comprise surfactants (Col. 5, lines 44 - Col. 6, line 25). Suspending agents such as calcium carbonate and silicas are also included in the matrix composition (Col. 6, lines 43-52). The adhesive composition can be applied to such substrates as paper, polymers, wovens or nonwovens (Col. 9, lines 10-16).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to include the adhesive cleansing matrix of Engel in the cleansing

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article of Smith to prepare a cleansing article for skin or hair that contains two non-adhesive layers and an adhesive cleansing layer disposed between the two non-adhesive layers.

While the reference does not teach the complete concentration range, differences in concentration will not support the patentability of subject matter encompassed by the prior art unless there is evidence indicating such concentration or temperature is critical. Where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation. *In re Aller*, 220 F.2d 454, 105 USPQ 233, 235 (CCPA 1955).

One of ordinary skill in the art would have been motivated to do this to provide a cleansing article that provides an effective cleansing and therapeutic benefit to the skin and hair of the user that is convenient, inexpensive and sanitary.

Therefore, the invention as a whole would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made.

Claims 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith, III (US 6491928) in combination with Engel et al. (US 6635704) in further combination with Jehan (GB 2307862). The teachings of Smith and Engel are discussed above. Neither reference expressly teaches the use of magnetizable particles in the composition.

Jehan teaches the incorporation of magnetizable particles in a transdermal patch composition (Page 2). In one embodiment, copper and zinc are the particulate

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incorporated and when placed on the skin small electromagnetic impulses are generated (Page 3-4).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to incorporate magnetizable particles into a transdermal patch composition.

One of ordinary skill in the art would have been motivated to do this treat skeletal or muscular pain (Page 4 of Jehan).

Therefore, the invention as a whole would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made.

Claim 44 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smith, III (US 6491928) in combination with Engel et al. (US 6635704) in further combination with Auguste et al. (US 6338839). The teachings of Smith and Engel are discussed above. Neither reference expressly teaches the incorporation of polyamides as the inert fillers in the adhesive matrix.

Auguste teaches a skin composition wherein the filler included in the composition can be silica, talc and polyamides (Orgasol) (Col. 5, lines 4, 49-58).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to prepare an adhesive matrix layer for a transdermal device that includes conventional components, specifically polyamides as inert fillers.

One of ordinary skill in the art would have been motivated to do this to prepare a matrix with enhanced feel or to thicken the matrix or to aid in the binding or gelling of the matrix.

Therefore, the invention as a whole would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made.

Response to Arguments

Applicant's arguments with respect to claim1, 5-30 and 35-55 have been considered but are moot in view of the new ground(s) of rejection.

Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert M. Joynes whose telephone number is (571) 272-0597. The examiner can normally be reached on Mon.-Thurs. 8:30 - 6:00, alternate Fri. 8:30-5:00.

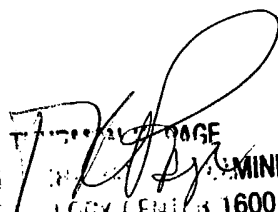
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K. Page can be reached on (571) 272-0602. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Robert M. Joynes
Patent Examiner
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